

NEWS



Contact: Peter Saharko
Tel: (609) 292-0306
Fax: (609) 777-3634
State of New Jersey
Department of Labor
PO Box 110
Trenton, New Jersey
08625-0110

Notice of Proposed Amendment

**RE: Proposed Amendments: N.J.A.C. 12:90-3.12, 3.13, 4.12, 4.13, 5.15, 6.5,
8.2, 8.16 through 8.20 and 9.1**

PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH

Boilers, Pressure Vessels and Refrigeration

License, Inspection and Penalty Fees

Attached please find the above-referenced matter which was published in the January 5, 2004 New Jersey Register.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer at (609) 777-2960.

LABOR**(a)****PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH****Boilers, Pressure Vessels and Refrigeration License, Inspection and Penalty Fees****Proposed Amendments: N.J.A.C. 12:90-3.12, 3.13, 4.12, 4.13, 5.15, 6.5, 8.2, 8.16 through 8.20 and 9.1**

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:7-1 et seq. and 34:7-14 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-12.

A public hearing on the proposed amendments will be held on the following date at the following location:

Tuesday, January 27, 2004
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 984-3620 if you wish to be included on the list of speakers.

Submit written comments by March 5, 2004 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Affairs
Department of Labor
PO Box 110-13th Floor, Suite G
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

If you need this document in Braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The Department of Labor is proposing amendments to its rules at N.J.A.C. 12:90 which govern the standards for the licensing of engineers and the protection of life and property in the use of boilers, pressure vessels and refrigeration plants. Specifically, pursuant to legislative will, as expressed in Senate Bill No. 2672 which went into effect on July 1, 2003 as P.L. 2003, c.117, the boiler and pressure vessel license, inspection and penalty fee schedules as set forth in N.J.S.A. 34:7-1 et seq. were amended. Thus, the Department is obliged to amend those portions of the rules which pertain thereto. A summary of the proposed amendments follows:

N.J.A.C. 12:90-3.12(b)1 has been amended to reflect that the application fee for a New Jersey Certificate of Competency by a qualified boiler and pressure vessel inspector has been increased from \$25.00 to \$50.00.

N.J.A.C. 12:90-3.12(c)1 also reflects the identical fee increase of the New Jersey Certificate of Competency application fee from \$25.00 to \$50.00 as it pertains to those qualified inspectors whose duties will be limited to shop inspections and who wish to apply for a Certificate of Competency.

N.J.A.C. 12:90-3.12(d)1 similarly reflects the identical fee increase of \$25.00 to \$50.00 of the New Jersey Certificate of Competency application fee from \$25.00 to \$50.00 for those inspectors whose duties will be limited to owner-user inspections who wish to apply therefor.

N.J.A.C. 12:90-3.13 has been amended to reflect that the fee for the renewal of a Certificate of Competency has been raised from \$10.00 to \$20.00 for a one-year renewal and from \$20.00 to \$40.00 for a three-year renewal.

N.J.A.C. 12:90-4.12(a)1 has been amended to reflect that the fee for each boiler inspected in the course of a shop inspection has been raised from \$25.00 to \$50.00. Moreover, N.J.A.C. 12:90-4.12(b), which required that an inspector's travel expenses be reimbursed at the time of the unit inspection, has been deleted.

N.J.A.C. 12:90-4.13(a) has been amended to require that an insurance company pay a fee of \$20.00, instead of the previous fee of \$10.00, to the

Commissioner of Labor within 30 days of an annual field inspection carried out by the insurance company.

N.J.A.C. 12:90-4.13(c), which contains the fee schedule for annual internal-external inspections made by a State inspector has been amended to reflect that payment thereof shall be made to the Commissioner of Labor rather than the inspector. The fee amounts have also been amended as follows: for the inspection of an area of 10 square feet to not over 60 square feet, the fee is now \$40.00 instead of \$25.00; for an area of 60 square feet to not over 1,000 square feet, the fee is now \$55.00 instead of \$35.00, while that for an area of 1,000 square feet and over is now \$75.00 instead of \$50.00.

N.J.A.C. 12:90-4.13(d), which has hitherto related to the payment of an inspector's travel expenses incurred by an inspector in the performance of an annual internal-external inspection, has been deleted. The current subsection (e) has been recodified as (d). It has itself been amended to reflect that in addition to the annual internal-external inspection, there may be an external inspection for which the owner or user of the premises inspected shall pay a fee of \$50.00 instead of the previous fee of \$25.00 to the Commissioner of Labor rather than the inspector.

N.J.A.C. 12:90-5.15(a), which refers to fees for shop inspections, has been amended to reflect a fee increase from \$25.00 to \$50.00 for each pressure vessel inspected. The latter applies when the purpose of the visit is to inspect a specific vessel. Additionally, subsection (b), which refers to the payment of an inspector's travel expenses, has been deleted. In addition, reference to reimbursement of an inspector's travel-related fees have been deleted.

N.J.A.C. 12:90-6.5(a), which pertains to field inspection fees of a refrigeration system, has been amended to reflect that the cost of an annual inspection made by an insurance company, has been increased from \$10.00 to \$20.00. Moreover, the fees stipulated in subsection (c) for an annual field inspection by the State, based on the refrigeration capacity of the system to be inspected, have been amended. The fee has been raised to \$50.00 from \$35.00 for a refrigeration system of over three and under 25 tons; to \$75.00 from \$50.00 for a system of 25 tons and over, but less than 300 tons; and to \$100.00 from \$70.00 for systems of 300 tons and over. Additionally, subsection (d), which refers to the payment of an inspector's travel expenses, has been deleted. Lastly, the foregoing fees shall be made payable to the Commissioner of Labor instead of the inspector.

N.J.A.C. 12:90-8.2(k) has been amended to note that the fee for any license issued by the Bureau of Boiler and Pressure Vessel Compliance is increased from \$25.00 to \$50.00, while the fee for a raise of grade or additional classification is raised from \$20.00 to \$40.00. The subsection has also been amended to reflect that the licensing fee shall be made payable to the Commissioner of Labor rather than the State's Treasurer.

N.J.A.C. 12:90-8.16(a), which addresses issues concerning the re-examination of an applicant who has failed a competency examination, has been amended through the deletion of the requirement that a \$10.00 fee therefor be received from the applicant within 60 days of a second failure. A new provision has replaced the latter, whereby, if an applicant does not appear after having been called for a third re-examination, his or her application will be voided.

N.J.A.C. 12:90-8.16(b) provides that upon failing the examination for the third time or if an application is cancelled, an applicant who wishes to retake the examination shall wait three months before reapplying for the examination at which time a new application form shall be completed and submitted to the Bureau with the appropriate fee.

N.J.A.C. 12:90-8.17(c) has been amended to reflect that the penalty for violating this section, which deals with the posting of a license adjacent to the equipment which is subject to inspection, has been raised to \$500.00 from \$50.00.

N.J.A.C. 12:90-8.18(d), which concerns itself with the suspension or revocation of an inspector's license, has been amended to note that any persons performing the duties of a licensee and holding an expired license shall now be subject to a minimum penalty of \$500.00 and a maximum penalty of \$5,000. The prior maximum penalty had been \$500.00.

N.J.A.C. 12:90-8.18(e) has similarly been altered to reflect the latter change in penalty amount regarding the attempt to obtain a license by fraudulent means.

N.J.A.C. 12:90-8.19(a) is amended to reflect an increase in the renewal of a license fee for one year from \$10.00 to \$20.00 and, for three years, from \$20.00 to \$40.00.

N.J.A.C. 12:90-8.19(c)1 has been amended to reflect that the fee for the renewal of an expired license has been raised from \$15.00 to \$30.00 when the license renewal is no more than four months past the expiration date.

N.J.A.C. 12:90-8.20(e), the penalty for violating this subsection, which addresses employment of unlicensed persons in emergency situations, has

been amended from a minimum of \$50.00 to \$500.00 and from a maximum of \$500.00 to \$5,000 per day for each cited violation.

N.J.A.C. 12:90-9.1(a)1 has been amended to include reference to the issuance of penalties pursuant to N.J.S.A. 34:7-6, as well as the issuance of findings of violation of N.J.S.A. 34:7-1 et seq., of the Act on Licensing of Operating Engineers and Firemen, and the reference the penalty provisions at N.J.S.A. 34:7-26 of the Act on Inspection of Boilers, Pressure Vessels, N.J.S.A. 34:7-14 et seq.

N.J.A.C. 12:90-9.1(a)1 has also been amended by the addition of subparagraphs (a)1i and ii. The former provides that in accordance with N.J.S.A. 34:7-6, any person who violates any provision of the Act on Licensing of Operating Engineers and Firemen shall be liable to a penalty of not less than \$500.00, nor more than \$5,000 per day for each violation. Subparagraph (a)1ii provides that any owner, lessee, seller or operator of any steam or hot water boiler or similar equipment specified in N.J.S.A. 34:7-14, pressure vessel or refrigeration system who shall sell, use, cause or allow to be used such steam or hot water boiler or similar equipment shall be liable to a penalty of not less than \$500.00, nor more than \$10,000 for each first offense, nor more than \$25,000 for each subsequent offense.

Because the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will have a positive social impact. Specifically, they will continue to insure the integrity of the system whereby boiler, pressure vessel and refrigeration inspectors continue to be licensed in a defined manner designed to protect the public safety. Additionally, the amendments, by increasing the penalties for violations of the Act as required by the Legislature, will serve to deter those persons who do not adhere to the law and to these rules. Moreover, it is to be expected that adherence to the rules as amended will make for a better educated industry through the reduction of accidents and equipment failures related to non-compliance with the law and these rules. This, in turn, will foster an increase in the confidence of the citizenry in the Bureau of Boiler and Pressure Vessel Compliance which is charged with the protection of the lives of those who operate and are potentially affected by the hazards associated with boiler, pressure vessel and refrigeration units.

Economic Impact

The proposed amendments will have an impact on those persons who seek competency certification licensing as boiler, pressure vessel and refrigeration inspectors, as well as upon those who do not adhere to the laws which govern same, N.J.S.A. 34:7-1 et seq. and 34:7-14 et seq. and the rules which explicate the latter. Thus, pursuant to the Legislature's directive, all licensing fees in the subject area have been increased as have the fines for violations of the law and rules. Obviously, for those who have to pay the increases, there will be a negative economic impact in the short term. However, in the long term, the fee increase will be absorbed as the cost of doing business and will be factored into other costs associated with the performance of inspection work. Concomitantly, if one obeys the law and these rules, there will be no need to concern oneself about the absorption of the costs which might flow from violating the law and the rules. Moreover, it is hoped that the large increase in the fines will ultimately produce a positive economic impact since it will deter those persons so inclined from violating the letter of the law and these rules thereby obviating the costs which stem from the severe degree of harm associated with boiler, pressure vessel and refrigeration accidents. Lastly, it should be noted that the Department does not anticipate that additional professional services will be required to comply with these rules.

Federal Standards Statement

There are no Federal regulations or law governing the subject matter of the proposed amendments; rather, the rules implement the amended provisions of N.J.S.A. 34:7-1 et seq., the Operating Engineers and Firemen Licensing Act and N.J.S.A. 34:7-14 et seq., the Boiler, Pressure Vessel and Refrigeration Act. As a result, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments will have no impact on jobs since the Department does not anticipate an increase or decrease in jobs as a result of these amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments will have an impact on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in the same manner as they will have an impact on larger business entities. Thus, while the paperwork associated with obtaining the necessary licenses will not have been altered by these rules, the costs associated therewith will increase. The increased costs, which are themselves not extraordinary, will have to be absorbed by all businesses, regardless of size, which involve themselves in activities which fall under the purview of the New Jersey Operating Engineers and Firemen Licensing Act, N.J.S.A. 34:7-1 et seq. and the Boiler, Pressure Vessel and Refrigeration Act, N.J.S.A. 34:7-14 et seq. The costs will be seen as that of doing business and will be allocated accordingly. Furthermore, the additional costs associated with the imposition of fines for those who violate the aforementioned Acts and these rules will not have to be absorbed if the business in question does not, in fact, violate same. Lastly, it is noted that no additional reporting, recordkeeping or substantive compliance requirements are being proposed.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

12:90-3.12 Qualification of inspectors

(a) (No change.)

(b) Any inspector who shall perform boiler inspections under the requirements of N.J.A.C. 12:90-4.10 (and/or N.J.A.C. 12:90-5.14) shall receive a Certificate of Competency after submitting an application for a Certificate of Competency and meeting the following requirements:

1. An application for a New Jersey Certificate of Competency shall be completed in its entirety, signed and dated by the applicant, and the applicant's signature shall be notarized. The application shall include the applicant's name, address, city and state with zip code, county, telephone number, education, place of employment, National Board and other state commissions held and a statement of experiences. The application shall be accompanied by a [\$25.00] \$50.00 application fee; and

2.-3. (No change.)

(c) Any inspector whose duties shall be limited to shop inspections that require a New Jersey Certificate of Competency can apply for a "Shop Inspection" Certificate of Competency based solely on holding a valid Commission issued by the National Board of Boiler and Pressure Vessel Inspectors. The application shall meet the following requirements:

1. An application for a New Jersey Certificate of Competency shall be completed, signed and dated by the applicant and this signature shall be notarized. The application shall include the applicant's name, address, city and state with zip code, county, telephone number, education, place of employment, National Board and other state commissions held and a statement of experiences. The application shall be accompanied by a [\$25.00] \$50.00 application fee; and

2. (No change.)

(d) Any inspector whose duties shall be limited to owner-user inspections under N.J.A.C. 12:90-5.12, 5.13 or 5.14 shall receive a Certificate of Competency after submitting an application for a Certificate of Competency and meeting the requirements under (d)1 through 3 below.

1. An application for a New Jersey Certificate of Competency shall be completed, signed and dated by the inspector, and this signature shall be notarized. The application shall include the applicant's name, address, city and state with zip code, county, telephone number, education, place of employment, National Board and other state commissions held and a statement of experiences. The application shall be accompanied by a [\$25.00] \$50.00 application fee.

2.-4. (No change.)

(e) (No change.)

12:90-3.13 Renewal of Certificates of Competency

(a) (No change.)

(b) When applying for the renewal of a Certificate of Competency, the authorized inspection agency or owner/user inspection agency shall submit a renewal fee of [\$10.00] \$20.00 for a one-year renewal or [\$20.00] \$40.00 for a three-year renewal.

(c)-(e) (No change.)

SUBCHAPTER 4. BOILERS

12:90-4.12 Fee and visit charge for shop inspection

(a) The fee for a shop inspection shall be the higher of either (a)1 or 2 below:

1. A fee of [\$25.00] \$50.00 for each boiler inspected; or
2. (No change.)

[(b) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of inspection.]

12:90-4.13 Fee for field inspection

(a) An insurance company making an annual field inspection shall pay a fee of [\$10.00 to the State payable by and collected from the user by the inspector at the time of inspection] \$20.00 for each boiler inspected. The insurance company shall pay the fee to the Commissioner of Labor within 30 days of performing the inspection.

(b) (No change.)

(c) The fee for a State field inspection for each annual internal-external inspection, which shall include a hydrostatic test if found necessary, shall be paid to the [inspector] Commissioner of Labor as follows:

- | | |
|--------------------------------------|-------------------|
| 1. Ten and not over 60 square feet | [\$25.00] \$40.00 |
| 2. 60 and not over 1,000 square feet | [35.00] \$55.00 |
| 3. 1,000 square feet and over | [50.00] \$75.00 |

[(d) In addition to the inspection fee charged for a State field inspection, the travel expenses of the inspector shall be paid at the time of inspection.]

[(e)](d) In addition to the annual internal-external inspection, there may be an external inspection for which the owner or user shall pay to the [State inspector] Commissioner of Labor a fee of [\$25.00, in addition to the travel expense, at the time of the field inspection] \$50.00.

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.15 Fee and visit charge for shop inspection

(a) The fee for shop inspection shall be either:

1. (No change.)
2. A fee of [\$25.00] \$50.00 for each pressure vessel when the purpose of the visit is to inspect specific vessels.

[(b) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.]

SUBCHAPTER 6. REFRIGERATION SYSTEMS

12:90-6.5 Fee for field inspection

(a) An insurance company making an annual inspection of refrigerating systems shall pay a [\$10.00] \$20.00 fee to the [State for each system payable by and collected from the user by the inspector at the time of field inspection] Commissioner of Labor for each system.

(b) (No change.)

(c) The fee for an annual field inspection by the State, based on the refrigeration capacity of the system, shall be [paid to the State inspector] made payable to the Commissioner of Labor as follows:

- | | |
|---|-------------------|
| 1. Over three and under 25 tons | [\$35.00] \$50.00 |
| 2. 25 tons and over, but less than 300 tons | [50.00] \$75.00 |
| 3. 300 tons and over | [70.00] \$100.00 |

[(d) In addition to the field inspection fee, the travel expenses of the State inspector shall be paid at the time of inspection.]

SUBCHAPTER 8. LICENSING OF OPERATING ENGINEERS AND BOILER OPERATORS

12:90-8.2 Application for licenses

(a)-(j) (No change.)

(k) The fee for each examination and for [an original] any license issued by the bureau shall be [\$25.00] \$50.00, and the fee for a raise of grade or additional classification shall be [\$20.00] \$40.00. The fee shall be in the form of a check or money order made payable to the [Treasurer, State of New Jersey] Commissioner of Labor and shall accompany the application.

(l)-(m) (No change.)

12:90-8.16 Re-examination

(a) An applicant who has failed an examination may not be re-examined for a period of at least three months, but may be allowed one re-examination without additional charge within six months of the original examination. If again unsuccessful, the applicant may be re-examined within three months[, provided a fee of \$10.00 is received within 60 days of the second failure]. If an applicant does not appear after being called for re-examination a third time, the application shall be canceled.

(b) Upon failing the examination for the third time or if an application is canceled, an applicant who wishes to retake the examination shall wait three months [prior to reapplication] before reapplying for examination, at which time a new application form shall be fully completed and submitted to the Bureau with the appropriate fee.

12:90-8.17 Posting of license

(a)-(b) (No change.)

(c) A penalty of [\$50.00] \$500.00 may be imposed for violation of this section.

12:90-8.18 Suspension or revocation of license

(a)-(c) (No change.)

(d) A license shall be automatically canceled on the last day of the month in which it expires. Any persons performing the duties of a licensee and holding an expired license shall be subject to a minimum penalty of \$500.00 and a maximum penalty of [\$500.00] \$5,000 per day. [The] In addition, the supervisor and/or employer may be subject to a similar penalty.

(e) Any person using fraudulent means to obtain a license shall be subject to prosecution and/or a penalty up to [\$500.00] \$5,000. Any license acquired through such means shall be invalid.

(f) (No change.)

12:90-8.19 Renewal of license

(a) When applying for the renewal of a license, it shall be necessary to return only the signed identification card with a fee of [\$10.00] \$20.00 for a one-year renewal or [\$20.00] \$40.00 for a three-year renewal.

(b) (No change.)

(c) An application for a renewal of an expired license shall be approved provided:

1. A fee of [\$15.00] \$30.00 is enclosed for one year or [\$30.00] \$60.00 for a three-year renewal when the license renewal is late no more than four months past the expiration date;

2.-3. (No change.)

(d)-(e) (No change.)

12:90-8.20 Employment of unlicensed person in emergency

(a)-(d) (No change.)

(e) If an unlicensed person in (b)4 above who has filed an application with the Bureau of Boiler and Pressure Vessel Compliance fails to appear for an examination as notified or a licensed person is not hired within the extension period set by the Commissioner, the Commissioner may at his or her discretion refer a licensed person from an employment agency or other appropriate source to the employer. A penalty may be imposed of not less than [\$50.00] \$500.00 nor more than [\$500.00] \$5,000 per day for each [day in] violation as provided in N.J.S.A. 34:7-6.

(f) (No change.)

12:90-9.1 Violations

(a) This subchapter shall apply to:

1. Findings of violations of N.J.S.A. 34:7-1 et seq., and the issuing of penalties pursuant to N.J.S.A. 34:7-6 of, the Act on Licensing of Operating Engineers and Firemen and N.J.S.A. 34:7-14 et seq., and the issuing of penalties pursuant to N.J.S.A. 34:7-26 of, the Act on Inspection of Boilers, Pressure Vessels and Refrigeration Systems;

i. In accordance with N.J.S.A. 34:7-6 any person who shall violate any of the provisions of the Act on Licensing of Operating Engineers and Firemen shall be liable to a penalty of not less than \$500.00 nor more than \$5,000 per day for each violation.

ii. In accordance with N.J.S.A. 34:7-26, any owner, lessee, seller or operator of any steam or hot water boiler or similar equipment specified in N.J.S.A. 34:7-14, pressure vessel or refrigeration system who shall sell, use, cause or allow to be used such steam or hot water boiler or similar equipment specified in N.J.S.A. 34:7-14, shall be liable to a penalty of not less than \$500.00 nor more than \$10,000 for each first offense and not less than \$500.00 nor more than \$25,000 for each subsequent offense, to be collected by a civil action, or at the Commissioner's discretion;

2.-3. (No change.)

(b)-(e) (No change.)